

REMARKS

I. The Rejections under DOUBLE PATENTING

A terminal disclaimer is attached hereto, to overcome the rejections of DOUBLE PATENTING.

II. The Rejections Under 35 U.S.C. § 102(b)

Claims 80-83, 87, 88 and 90-97 stand rejected under 35 U.S.C. § 102(b) “as being anticipated by U.S. Patent No. 3,537,006 to Hanson” (“Hanson”). The Official Action provides that:

Regarding claim 80, Hanson discloses first and second backing members (fig.2:96 & 91), a first structure (fig. 2:50) attached to the first backing and indirectly through studs 82 & 72 to the second backing member (fig. 2:91). The backing members are spaced from each other (fig. 2: see gap adjacent 85) with two upright studs (fig. 2: 82 & 72) and the second backing member is capable of being disposed between the second stud (fig. 2: 72) and a third stud (fig. 1: see plurality of panel backing) and the second end of the first backing member (fig.2:96) is adjacent to the second stud (fig. 2: 72).

For a reference to properly anticipate the subject matter of a claim, the reference must disclose each and every claimed element in the same form as recited in the claim.

As will be discussed below, Hanson fails to disclose each and every element of claims 80-83, 87, 88 and 90-97.

The Official Action asserts that the wallboard panels 96 & 91 of Hanson comprise “first and second backing members”. As can be seen in Figure 2 of Hanson, the wallboard panels 96 and 91 are exterior panels and do not comprise backing members. For this reason alone, Hanson cannot anticipate the subject matters of claims 80-83, 87, 88 and 90-97. Furthermore, independent claim 80 has been amended to clarify that the

first structure is substantially planar. The Official Action asserts that the trackway 50 of Hanson comprises a first structure. However, the trackway 50 of Hanson is not substantially planar.

Hanson provides that “trackway 50 includes a central horizontal panel 52 and flanking vertically disposed side panels 53 and 54, formed integrally with the horizontal panel 52 and extending upwardly therefrom.” See column 4, lines 19-22. Trackway 50 is not substantially planar and for this reason, in addition to the foregoing reason, Hanson cannot anticipate the subject matter of claim 80.

With respect to claim 82, the Official Action asserts that the central panel 26 of the trackway 24 comprises the recited central structure. Claim 82 has also been amended to clarify that the second structure is substantially planar. The trackway 24 is not substantially planar. See, column 3, lines 42-47 of Hanson. Thus, Hanson cannot anticipate the subject matter of claim 82.

Claims 83, 87 and 88 all depend (either directly or indirectly) from claim 80 which, as was discussed above, is not anticipated by Hanson. Accordingly, it also follows that the subject matters of dependent claims 83, 87 and 88 are also not anticipated by Hanson.

Claim 90 has been amended to clarify that the first structure is substantially planar and claim 91 has been amended to clarify that the second structure is substantially planar. Thus, Hanson fails to anticipate the subject matters of claims 90 and 91 for the same reasons that Hanson fails to anticipate claims 80 and 81 as was discussed above.

III. The Rejections Under 35 U.S.C. § 103

Claims 84-86 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hanson. As indicated above, Hanson fails to disclose the use of backing members. Hanson also fails to teach the use of a substantially planar first structure attached to first and second backing members and which spans therebetween. The trackways 24 and 50 of Hanson are substantially C-shaped for supporting the ends of the vertically extending studs therein. See column 4, lines 54-70 and Figures 2 and 4 of Hanson. The Official Action fails to point to any motivation in Hanson that would have led a person of ordinary skill in the art to make the trackways 24 and 50 substantially planar. In fact, if one were to make the trackways 24 and 50 substantially planar, they would not be suited to support the ends of the vertical studs therein. Accordingly, a *prima facie* case of obviousness has not been established with respect to claims 84-86.

Claim 89 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hanson in view of U.S. Patent No. 3,680,271 to Satchell ("Satchell"). Claim 89 depends indirectly from claim 80. As was discussed above, Hanson fails to provide the requisite motivation to modify the trackways disclosed therein to make them substantially planar. Satchell also fails to provide that motivation. Accordingly, even if one were to combine the teachings of Satchell with the teachings of Hanson, the resulting combination would not satisfy the recitations of claim 80 and/or claim 89 that depends from claim 80.


IV. SUMMARY

Accordingly, since all pending claims 42-89 are believed to be clearly allowable, a notice to that effect is earnestly solicited.

Respectfully submitted,

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